

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF LOUISIANA
3 ALEXANDRIA DIVISION

4 UNITED STATES OF AMERICA * CRIMINAL ACTION
5 * NUMBER 07-10030-01
6 vs. * April 14, 2008
7 * 11:11 a.m.
8 RICHARD L. McNAIR * Alexandria, Louisiana
9 *
10 * * * * *
11 * * * * *

12 SENTENCING

13 Certified transcript of proceedings before the Honorable
14 Dee D. Drell, United States District Judge.

15 APPEARANCES:

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26 Proceedings recorded by mechanical stenography, transcript
27 produced by computer.

1 THE COURT: Good morning to you-all. This is
2 *United States v. Richard Lee McNair*, Criminal Number
3 07-10030. The matter is called for sentencing at this
4 time.

5 Would y'all make your appearances, please?

6 MR. COWLES: Good morning, Your Honor. Jim
7 Cowles on behalf of the United States.

8 MR. BLANCHARD: And Wayne Blanchard for Richard
9 McNair, Your Honor.

10 THE COURT: All right. I see Mr. McNair here
11 with you.

12 Good morning, Mr. McNair.

13 THE DEFENDANT: Good morning, Your Honor.

14 THE COURT: Everyone ready to proceed at this
15 point?

16 MR. COWLES: Yes, Your Honor.

17 MR. BLANCHARD: Yes, Your Honor.

18 THE COURT: All right. And we moved the
19 sentencing date forward at this point, again, I believe by
20 everyone's request. Is there any objection to the date;
21 that is, to conduct the sentencing at this time?

22 MR. COWLES: No, Your Honor.

23 MR. BLANCHARD: No, Your Honor.

24 THE COURT: All right. Is there any other reason
25 why sentence shouldn't be imposed at this time?

1 MR. COWLES: No, Your Honor.

2 MR. BLANCHARD: No, Your Honor.

3 THE COURT: Then have the defendant and defense
4 counsel and the government received and reviewed a copy of
5 the presentence report?

6 MR. COWLES: Yes.

7 MR. BLANCHARD: Yes, Your Honor.

8 THE COURT: And are there any objections
9 regarding the timing or receipt of the presentence report?

10 MR. COWLES: Not from the government, Your Honor.

11 MR. BLANCHARD: Not regarding the timing or
12 receipt, no, Your Honor.

13 THE COURT: Okay. You know that's a different
14 question from the other one.

15 And Mr. Blanchard, you and your client have discussed
16 the presentence report. Would that be fair?

17 MR. BLANCHARD: We have, Your Honor.

18 THE COURT: And Mr. McNair, do you feel like you
19 need any additional time to do that with Mr. Blanchard?

20 THE DEFENDANT: No, Your Honor. Thank you.

21 THE COURT: All right. I'm not sure I actually
22 had y'all introduce yourselves. Mr. Cowles, you're here
23 for the government.

24 MR. COWLES: Yes, sir.

25 THE COURT: And I see Mr. Belgard at the table

1 next to you. Obviously Mr. Blanchard and Mr. McNair are
2 here.

3 Now, objections, Mr. Blanchard, from you as to the
4 factual statements contained in the presentence report.

5 MR. BLANCHARD: Not as to the factual statements,
6 Your Honor.

7 THE COURT: All right. What about the
8 government?

9 MR. COWLES: None, Your Honor.

10 THE COURT: Any errors, additional corrections in
11 the presentence report, or alterations or additions of any
12 kind from either side that need to be made to make the
13 presentence report accurate?

14 MR. COWLES: Not from the government, Your Honor.

15 MR. BLANCHARD: No, Your Honor.

16 THE COURT: All right. And as, then, the
17 defendant, defense counsel, and the government don't have
18 objections to the factual statements contained in the
19 presentence report and as I find those statements to be in
20 harmony with the evidence and the information presented,
21 I'll adopt those factual statements as my findings of fact
22 in this case.

23 Now then, Mr. Blanchard, do you have anything that
24 you'd like to say at this point in mitigation of
25 punishment?

1 MR. BLANCHARD: Yes. First of all, Your Honor,
2 last week while I was in trial, I believe I got an addendum
3 saying that there were no objections to the presentence
4 investigation. But to make it clear that in my presentence
5 memorandum, that I did object to the suggestion that there
6 should be an upward departure, so I want that on the
7 record.

8 THE COURT: Yes. And I noted that. I noted your
9 objection to that. In fact, I noted specifically your
10 argument for a specific sentence, I assume in accordance
11 with *Gall*. That gives you the opportunity to do that. And
12 you, if I recall correctly, asked me to run the sentence
13 concurrent, if I read it correctly.

14 MR. BLANCHARD: I did, Your Honor. And you know,
15 there are no other reasons other than what I stated in my
16 memorandum, but I would like to state, you know, some of
17 those reasons.

18 And those reasons are, first of all, the fact that he
19 did not resist removal or extradition from Canada. You
20 know, it seems to me that it would have been -- if you were
21 looking for another opportunity to escape, the best thing
22 would have been to resist and to resist extradition and to
23 remain in a Canadian jail.

24 He also wanted to dispose of this, Your Honor, and did
25 not take my suggestion that I thought, arguably, that this

1 should have been an assimilated defense, that he is not
2 serving a federal sentence; he was serving a sentence for
3 the state of North Dakota. And with that in mind, I urged
4 him to ask me to -- or to allow me to move to dismiss the
5 indictment based on that, that it should have been an
6 assimilated offense. He didn't want to do that. I think
7 that all goes towards acceptance of responsibility.

8 He did not want to go to trial. Again, I think if
9 you're looking for an opportunity to escape or if you're
10 serving a life sentence, just to get out of the prison, I
11 mean, one way to do it is to go to trial, to have to be
12 transported every day.

13 So I think those are all things that you can take into
14 account in going along with the suggestion of the plea
15 agreement, the non-binding recommendation from the United
16 States that this should be a concurrent sentence. He is
17 already serving a life sentence. I think everybody has to
18 have a little hope that if they change their behavior,
19 maybe there's a chance that he would be -- you know, have
20 some short time of freedom and not die inside of a prison,
21 Your Honor. And with all of that in mind, I would urge you
22 to impose a concurrent sentence.

23 THE COURT: All right. Thank you. I want to be
24 sure you haven't just created a problem here, Mr.
25 Blanchard, with regard to potential defenses in the case.

1 My pretrial understanding in this matter was that there
2 were compacts and agreements between the state and the
3 government pursuant to which Mr. McNair was properly
4 incarcerated in the first place.

5 MR. BLANCHARD: There is. I have those.

6 THE COURT: Pardon me?

7 MR. BLANCHARD: There is. I have the paperwork,
8 Your Honor.

9 THE COURT: I mean, even at this late date, what
10 are you doing with that legal defense? You indicated you
11 had --

12 MR. BLANCHARD: I'm just saying that he waived
13 it, Your Honor, and that that's something that you
14 should -- you can take into account in giving him a
15 concurrent sentence.

16 THE COURT: All right.

17 Mr. McNair, you understand what he's just said?

18 THE DEFENDANT: Yes, sir. And I concur with what
19 he said, that I don't want to fight it anymore, you know.
20 I've caused enough problems around here, you know, with
21 what I did, and I understand that now. And that's why I
22 just want to plead guilty and get to the ADX and do my
23 time, Your Honor.

24 THE COURT: Okay. Any comment from the
25 government at this point with regard to that?

1 MR. COWLES: No, Your Honor.

2 THE COURT: All right. Very well.

3 Anything else, Mr. Blanchard?

4 MR. BLANCHARD: There is one other thing I wanted
5 to say, Your Honor, and that is that he did debrief
6 extensively with Deputy Marshal Belgard and with the
7 Pollock officials about how he got out of Pollock and,
8 again, we would ask you to take that into consideration as
9 a reason for imposing a concurrent sentence.

10 THE COURT: All right. Thank you.

11 How about you, Mr. McNair, do you have anything that
12 you'd like to say or offer in mitigation of punishment?

13 THE DEFENDANT: Yes, Your Honor. In talking to
14 Mr. Belgard, Marshal Belgard --

15 THE COURT: Let me get you to keep your seat so
16 you can use the microphone.

17 THE DEFENDANT: In talking to Marshal Belgard, I
18 didn't realize the problems that this caused in the
19 community, the fear that it caused the people. When you do
20 something like this, I don't think you think about that.
21 You know, that's not something that enters your mind. You
22 just -- I was angry and I lashed out.

23 And I didn't realize the little lady that, you know,
24 came home and her front door was open, she was fearful that
25 I had entered her house. And that doesn't enter your mind

1 when you do something like this. And that's why I want to
2 take responsibility for this and I want to get it over with
3 and, you know, not hurt the community anymore. That's one
4 of the things that you don't think about, you know.

5 THE COURT: Let me ask you a question.

6 THE DEFENDANT: Anything, Your Honor.

7 THE COURT: You keep trying to get out.

8 THE DEFENDANT: (Nods head up and down.)

9 THE COURT: How do you mean you don't think about
10 that? I mean, you keep trying to go, keep trying to run.

11 THE DEFENDANT: Nobody ever brought it to my
12 attention the cost and the problems that it caused the
13 community until I talked to Marshal Belgard.

14 Marshal Belgard is a tremendous asset to this
15 community. He treated my family with respect. He did his
16 job in a respectful manner, and he pointed out, you know,
17 some of the things that you don't look at. I mean, like I
18 say, that little lady, I don't know who she was, but when
19 she came home and her front door was open -- I didn't enter
20 her house. I didn't go in anybody's home -- and when she
21 came home and she found her front door open and she was
22 scared to death, I think of what my mom or my family would
23 have thought of, and you don't think about that.

24 And I was very angry with the way North Dakota had
25 treated me on my hearing and they kind of led me along.

1 And that's no excuse. You know, that's no excuse. I'm
2 getting kind of off the beaten path here.

3 I take full responsibility for what I did, and I'll
4 spend the rest of my life in the ADX one way or the other,
5 so, you know, it's part of life, man.

6 THE COURT: All right, sir.

7 THE DEFENDANT: Thank you.

8 THE COURT: Anything from the government before
9 sentence is imposed?

10 MR. COWLES: No, Your Honor.

11 THE COURT: All right. With regard to a
12 statement of reasons for imposing sentence, I find that the
13 applicable offense level is 11. The applicable criminal
14 history is category Roman numeral V. The applicable
15 guideline ranges are 24 to 30 months incarceration, two to
16 three years of supervised release, with probation not being
17 applicable, and a 2,000 to \$20,000 fine. Restitution,
18 likewise, is not applicable, but a \$100 special assessment
19 is applicable.

20 And the reasons for those guideline determinations are
21 set forth in the presentence report which I find reasonably
22 addresses the criminal conduct in question, which
23 accurately reports the applicable statutory sentences, and
24 which accurately reports the correct term of supervised
25 release and fine range.

1 And while I'm there, I am going to order that the
2 presentence report be amended to correct Mr. Blanchard's
3 observation, that he did object to -- whether it's actually
4 an objection or a *Gall* argument, either way, he certainly
5 gave us proper input on that, so I will call those
6 objections because he labeled them that and we'll note
7 that.

8 With regard to deviation from the guidelines, what I'm
9 going to do requires some comment because I truthfully
10 considered sending a notice out in this case about an
11 upward departure. And that's because one thing that's not
12 dealt with in the presentence report, to a large degree, is
13 the time gap between Mr. McNair's escape and his return to
14 custody, the fact that he went around, evaded, went to
15 Canada, had to be caught in Canada and, yes, did waive
16 extradition. But frankly, considering -- and I decided not
17 to exceed the guidelines in the case because it, frankly,
18 probably doesn't make any difference, and everybody wanted
19 to get this case resolved and completed, so sending the
20 notice would only have delayed the sentence in the case.
21 And the sentence I'm going to impose is otherwise adequate
22 to handle the matter before us because the guidelines do
23 contemplate escape in this regard, and also, 3553(a)
24 factors don't otherwise yield compelling consideration not
25 to apply the guidelines.

1 So in imposing this sentence, I've noted the positions
2 of everybody involved. I reviewed the documents, of
3 course, and my role is to weigh all of the considerations
4 and enter a sentence which is just under the circumstances,
5 including the guidelines and the factors in 18 U.S.C.
6 Section 3553(a). And as I indicated, the sentencing
7 considerations in this particular case are taken into
8 account by the guidelines.

9 And pursuant, then, to the Sentencing Reform Act of
10 1984 and *United States v. Booker*, the defendant, Richard
11 Lee McNair, is sentenced to serve 30 months in the custody
12 of the United States Bureau of Prisons. Pursuant to the
13 provisions of Sentencing Guideline 5G1.3(a), this sentence
14 shall run consecutively to the imprisonment sentence the
15 defendant is currently serving. Restitution is not
16 applicable in this case. And considering the defendant's
17 financial condition and lengthy terms of incarceration, no
18 fine is ordered. And as Mr. McNair does pose a future risk
19 of illegal substance abuse, the mandatory drug testing
20 condition is ordered. The defendant is also required to
21 cooperate in the collection of DNA as directed.

22 With regard to the consecutive sentence, let me make
23 it clear for the record that that sentence is imposed
24 consecutive to any state sentence or federal sentence he is
25 presently serving or ordered to serve.

1 Okay. Upon release from imprisonment, the defendant
2 is placed upon a three-year term of supervised release.
3 And while on supervised release, Mr. McNair shall comply
4 with the standard conditions adopted by the court and the
5 following special conditions:

6 One, the defendant must apply any federal income tax
7 refund received during the period of supervision toward any
8 unpaid, court-ordered monetary obligations;

9 Second, the defendant shall be subject to financial
10 disclosure throughout the period of supervised release and
11 shall provide U.S. Probation with all requested financial
12 documentation. He is required to report all household
13 income to U.S. Probation as requested;

14 Three, the defendant shall undergo a substance abuse
15 evaluation and/or testing as directed by U.S. Probation;
16 and

17 Four, the defendant shall undergo a mental health
18 evaluation and/or treatment sessions as deemed necessary by
19 U.S. Probation.

20 It's additionally ordered that the defendant pay a
21 special assessment of \$100 to be due immediately.

22 The interest requirement is simply not applicable, but
23 to the extent that it would otherwise be applicable, it
24 would have been waived anyway.

25 I realize that the imposition of supervised release in

1 this case may seem odd, unusual, or silly, but it is
2 certainly possible at some point, because of information
3 not of my knowledge, that Mr. McNair's life sentence could
4 otherwise be commuted some kind of way or pardoned, so in
5 the event he is released prior to the conclusion of his
6 sentence, the supervised release would then, of necessity,
7 kick in.

8 With regard to appeal, Mr. McNair, I need to advise
9 you that you can appeal your conviction if you believe your
10 guilty plea was somehow unlawful or involuntary or if there
11 is some other fundamental defect in the proceedings that
12 was not waived by your guilty plea.

13 You also have a statutory right to appeal your
14 sentence under certain circumstances, particularly if you
15 think the sentence is contrary to law. And with few
16 exceptions, any notice of appeal must be filed within ten
17 days of judgment being entered in your case. If you're
18 unable to pay the cost of an appeal, you may apply for
19 leave to appeal in forma pauperis, and if you so request,
20 the clerk of court will prepare and file a notice of appeal
21 on your behalf.

22 Now, as to imprisonment, Mr. McNair, of course, is
23 remanded back to the custody of the United States Marshal
24 to begin service of the sentence in the case.

25 There was a plea agreement in the case. Are you

1 satisfied, Mr. Blanchard, the government has fully complied
2 with all obligations at this point?

3 MR. BLANCHARD: I am, Your Honor.

4 THE COURT: Are there any motions at this point
5 from the government or otherwise?

6 MR. COWLES: No, Your Honor.

7 THE COURT: All right. Then, I think everything
8 in this case is concluded.

9 MR. BLANCHARD: I do object to the sentence as
10 being unreasonable, Your Honor.

11 THE COURT: I understand.

12 Mr. McNair, the odd part is, by all reports you're a
13 very intelligent, talented guy, with otherwise great
14 potential. It's going to be difficult for you to do
15 anything with that, probably, where you're going, but, you
16 know, I just would like for you to have a better life even
17 inside and figure out a way to live out your days in some
18 peace, the best way I can figure it.

19 THE DEFENDANT: Thank you, Your Honor.

20 THE COURT: All right. We're adjourned.

21 (End of proceedings at 11:28 a.m.)
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24
25

C E R T I F I C A T E

I, Myra Primeaux, Official Court Reporter, do hereby
certify that the foregoing pages numbered 1 through 15 do
constitute a true and correct record of proceedings had in
said Sentencing to the best of my ability and
understanding.

I certify that the transcript fees and format comply
with those prescribed by the court and the judicial
conference of the United States.

Subscribed and sworn to this 11th day of March, 2009.

s/ Myra Primeaux

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